



30 years of protecting the San Juan Islands (1979-2009)

May 11, 2009

Mr. David Roberts
Assistant Region Manager Orca Straits District
Washington State Department of Natural Resources--Aquatic Region
919 N. Township Street
Sedro-Wooley, WA 98284-9384

Re: Comments in response to Draft Cherry Point Resource Protection and
Management Plan (April 2009)

Dear Mr. Roberts:

Please accept the following comments from Friends of the San Juans ("Friends") in response to the Draft Cherry Point Resource Protection and Management Plan ("Plan") that the Department of Natural Resources ("DNR") circulated to the members of the Cherry Point work group. Friends is pleased to see the comprehensive description of the Cherry Point ecosystem and risks to the organisms that compose the ecosystem. The evolution from the previous draft of the Plan to the April draft indicates that DNR invested a significant effort in revising the earlier document. The comments below thus address remaining statements within the Plan that would benefit from clarification.

Plan Comments

- P. 10, footnote 3 – The Plan currently defines bedlands as “the area below ordinary high tide or the line of navigability.” This should be revised to state that bedlands are those areas below extreme low tide.
- P. 11 (§1.1.1) – The Plan states that the public trust doctrine “provides for public use and access of navigable waters for navigation, fishing, and recreational activities.” However, the reach of the doctrine in Washington State likely extends beyond navigation, fishing, and recreational activities to protect environmental quality and water quality. As the Department of Ecology has noted in *The Public Trust Doctrine and Coastal Zone Management in Washington State*, “[t]he public’s interest in fishing can only be realized if water quality and quantity are adequate to support fish.” pub. no. 93-54, 42 (Oct. 1991) (available at <http://www.ecy.wa.gov/pubs/93054.pdf>). Thus, the Plan should identify additional interests protected by the public trust protections, such as environmental and aesthetic integrity, or remove the limiting sentence identified above.

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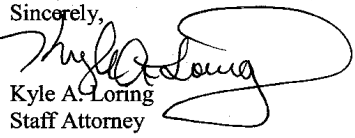
Protecting the San Juans, Preserving our quality of life

- P. 11 (§1.1.2) – The first paragraph notes that the Cherry Point ecosystem is unique. This paragraph would also benefit from a reference to the richness and sensitivity of that ecosystem.
- P. 18 – The Plan states at the end of the third full paragraph that “[i]ndustrial ownership of large portions of the shoreline has limited urban development and resulted in protection of many physical features and habitats along the Cherry Point shoreline.” This statement should be revised. Industrial ownership of the shoreline may have limited residential development along the shoreline, which could also adversely affect the Cherry Point ecosystem, but there is no documented support for the position that industrial ownership of the shoreline has actually resulted in the protection of habitats along the Cherry Point shoreline. On the contrary, the Cherry Point aquatic reserve process has adduced evidence that Cherry Point herring have declined catastrophically since levels recorded in the 1970s. Thus, at least the Cherry Point herring component of the ecosystem has not been “protected.”
- P. 19, (§1.3) – The Plan declares a three-fold purpose in several paragraphs in Section 1.3: protection, enhancement, and restoration. However, the last sentence of the first paragraph under Section 1.3 states that the “emphasis of this plan will be on protection and enhancement of aquatic resources at Cherry Point.” This statement should also include “restoration.”
- P. 24 – The Plan timeline indicates that the legislature enacted the Shoreline Management Act in 1972. The SMA was enacted in 1971.
- P. 70 (§4.4.6) – The Plan should explain why its marine mammal analysis does not consider species that are not listed at the state and federal levels.
- P. 81 – The Plan should include the common names of the exotic organisms that it lists in Table 5.
- P. 86 (§5.2.2) – In its general review of risks to the nearshore environment, the Plan does not identify threats such as overwater structures, shoreline armoring, fill, land clearing, and upland chemical application. These risks should be inserted into Section 5.2.2.
- P. 87 (§5.3.1) – The Plan implies that herring spawning grounds will be protected because “[d]ocumented herring spawning grounds are protected from habitat loss by the Washington Administrative Code Hydraulic Code Rules (WDFW, 2007).” However, at least in practice, those rules likely merely limit the amount of impact on herring spawning grounds by allowing overwater structures and other development in exchange for mitigation projects with unknown likelihoods of success.
- P. 88 (§5.3.1.3) – The title of this section is “The role of interactions.” A more accurate title may be “Synergistic Effects.”
- P. 97 (§5.4.2.1) – The Plan identifies “[e]xcess fertilizers, herbicides, and insecticides from residential areas” as sources of nonpoint pollution in the Cherry Point area, but does not similarly identify fertilizers, herbicides, and insecticides from industrial areas. If the industrial operators at Cherry Point are not using such chemicals, the Plan should note that fact. However, to the extent that the industrial landowners do apply fertilizers, herbicides, and insecticides within the Cherry Point area, this should be identified in the Plan.
- P. 102 (§5.7) – The section on impacts associated with overwater structures should include the tankers and other ships as overwater structures because they cause to shading and other impacts.

- P. 124 (§6.1) – The Plan should establish a desired future condition for Natural Resources that includes the continued existence of species that have historically enjoyed a presence at Cherry Point.
- P. 140 (§8.1.1) – In addition to the two questions established by the Plan for reviewing the reauthorization of existing leases, DNR should inquire whether the existing lease allows environmental degradation or prevents environmental protection, enhancement, or restoration.

Thank you for the opportunity to submit these comments. If you have any questions, please do not hesitate to contact me at 360-378-2319.

Sincerely,


Kyle A. Loring
Staff Attorney